

California Legislature



ASSEMBLY REPUBLICAN CAUCUS

January 29, 2014

Dr. Richard Pan
Chair, Assembly Health Committee
State Capitol, Room 6005
Sacramento, California 95814

Assemblyman Jim Frazier
Chair, Assembly Accountability and Administrative Review Committee
1020 N Street, Room 357
Sacramento, California 95814

Dear Dr. Pan and Assemblyman Frazier:

Recently, an investigation by the *National Review* found that Covered California has hired 43 felons as navigators to sign Californians up for health insurance through the state's exchange. Even more disturbing, some of these individuals have been convicted of crimes such as forgery, burglary and welfare fraud. The magazine quotes a Covered California official who dismisses the hiring of convicted criminals and says, "We do not see them as a threat."

We understand that individuals who have paid their debt to society deserve a second chance, but felons convicted of financial crimes should be disqualified from being hired by the state as navigators. Allowing these individuals to have access to private information, such as Social Security numbers, would be like giving an auto thief a set of car keys.

As California leads the way in implementing the federal Affordable Care Act, we must also establish safeguards to protect Californians from becoming victims of crime. We hope that you find the information uncovered by the press as troubling as we do.

Republicans have a long-standing interest in protecting sensitive patient information. Assemblyman Jeff Gorell has introduced Assembly Bill 1560, which would require Covered California to keep enrollee information private unless they give permission to be contacted by third parties. This legislation was introduced in response to another press article highlighting how Covered California had distributed the personal information of tens of thousands of people who visited the government website to insurance telemarketers without the knowledge or consent of these shoppers.

Last year, Assembly Republicans introduced Assembly Bill 3 in the First Extraordinary Session which would have prohibited anyone who has been convicted of felony crimes of dishonesty or

breach of trust from being hired by or contracting with Covered California if he or she would have access to the financial or medical information of enrollees. After receiving assurances that Covered California would implement a robust policy that protects California's residents, we modified the strict prohibition.

There was strong bipartisan support for Senate Bill 509 (DeSaulnier) and Assembly Bill 1428 (Conway), which were signed into law by the Governor, to follow the federal guidelines for background checks for Covered California workers and contractors.

Assembly Republicans last year also sent a letter to the Covered California board urging them to adopt a zero tolerance policy for hiring workers with criminal histories.

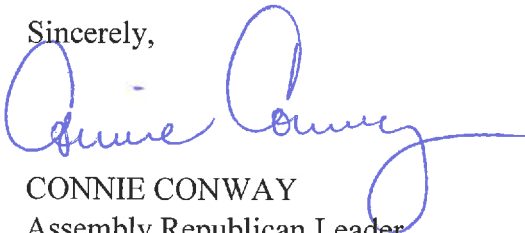
Therefore, we respectfully ask that you convene a joint hearing of the Assembly Accountability and Administrative Review Committee and the Assembly Health Committee to allow Covered California to explain its hiring policies in detail, including:

1. How many background checks revealed prior felonies? If so, what were those felonies and were any of them the felonies identified in Assembly Bill X1 3?
2. Has Covered California authorized anyone with prior criminal felonies to contract with Covered California or any organization contracting with Covered California? If so, how many and what were the circumstances that Covered California believed warranted that exception?
3. Who within the organization makes a determination that someone with a prior criminal conviction should be hired?
4. Has Covered California received any complaints from consumers about identify theft or fraud associated with contractors with Covered California? If so, how was that handled?


Holding a joint hearing would give the public a greater understanding of the priority Covered California places on sensitive information. We also believe that a hearing is appropriate given that we have asked for this same information twice from Covered California and they have not responded to our requests.

Thank you for considering a hearing to examine this important matter. We look forward to working with you to ensure the highest security standards are met when the public shares their personal information with state officials.

Sincerely,



CONNIE CONWAY
Assembly Republican Leader
Assembly District 26



BRIAN NESTANDE
Assembly District 42

January California's Obamacare Scandal

Officials say a criminal record should not keep someone from getting a job. But why *this* job?
By Jillian Kay Melchior

At least 43 convicted criminals are working as Obamacare navigators in California, including three individuals with records of significant financial crimes.

Although some of the offenses are decades old, and although convicted criminals account for only 1 percent of the 3,729 certified enrollment counselors in the state, Californians still have good cause to be concerned about their privacy.

Even a single crooked navigator could do significant harm to the public. That's because when navigators sign consumers up for health insurance under the Affordable Care Act, they have access to lots of private information, including Social Security numbers, home addresses, and financial data — basically, everything on the wish list of identity thieves and fraudsters. Navigators also are likely to work with a population that is more vulnerable than average.

Limited statistics released by Covered California — the state's new health-insurance exchange — showed that one navigator has repeat forgery offenses — one in 1982, then another in 1994, with a burglary in between. Another had two forgery convictions in 1988, in addition to a domestic-violence charge a decade later. Another committed welfare fraud in 1999 and had shoplifted on at least two prior occasions.

Since 2000, individuals now working as navigators have committed crimes including child abuse, battery, petty theft, and evading a police officer. At least seven navigators have multiple convictions. The information released covered only certified enrollment counselors, one of the three types of navigators working in California.

These statistics raise a delicate and controversial issue. On the one hand, it's in the public interest to give former criminals the chance to reform themselves and make a living in the legitimate economy. On the other hand, innocent consumers deserve adequate protection of their private information, especially when they're being compelled to buy something.

Last year, California's Republican lawmakers unsuccessfully requested that Covered California establish a policy forbidding anyone with a prior conviction, regardless of the date, to work as a navigator.

Assemblyman Brian Nestande, a Republican from the Inland Empire, says, "One person can do tremendous harm with access to that type of information, and you run that possibility with people with clean records, so you certainly don't want to up your odds by mixing in people with criminal records. . . . You can have somewhat of an argument if someone did one thing a long time ago, but to have a repeated offense of forgery — that's a huge red flag. That person should not be allowed access to this type of information."

Covered California's spokesman, Dana Howard, explained the exchange's logic in hiring navigators with criminal records: "These charges are old. People make mistakes. They paid their debt to society. They rehabilitated themselves. And so they apply, and they meet the qualifications. We do not see them as a threat."

But other official correspondence suggests the opposite. In December, Covered California wrote me a letter explaining why it could not release the public records I had requested about its navigators' criminal histories, offering statistics as a compromise. It cited "deliberative process privilege," and it also claimed

that releasing the records would violate the privacy of the navigators. (Odd, isn't it?, that the criminal navigators' privacy rights are apparently valued more than consumers' privacy rights.)

Here's the interesting part, though: "All of these documents are nondisclosable because 'the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record,'" a lawyer for the insurance exchange wrote, citing California Government Code §6255.

"Disclosing the names and criminal records of individuals applying to assist in Covered California's push to enroll vast numbers in health insurance by March 31, 2014, is likely to discourage participation in this critical program and thus harm the people of California."

Translation: If Californians had the same information as their insurance exchange's bureaucrats regarding navigators' criminal records, they'd be scared off — and that would undermine the political goal of high enrollment.

Perhaps Californians should consider themselves lucky that their navigators are required to submit to background checks at all — there is no such requirement in the ACA itself, and in as many as 31 states, no screening is mandated.

In California, however, certified enrollment counselors must pass a fingerprint-based criminal-background check conducted by the state Department of Justice. Applicants with potentially disqualifying convictions undergo individual legal review before a hiring decision is made, and they have the chance to appeal it within 60 days.

The problem is, a background check isn't worth much unless it's paired with an assessment process that screens out applicants who pose a risk to the public. In California, an applicant is disqualified only if he or she has "been convicted of or has a pending charge for a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of the job."

Furthermore, even though applicants are required to self-report prior offenses, records show that 21 prospective certified enrollment counselors who later proved to have criminal convictions failed to do so — and were approved anyway.

The fraud and forgery convictions, though disclosed by the applicants themselves, are the most worrying. Covered California's Howard tells me, "There isn't any law that says we should consider financial crimes as something that will follow you through the rest of your life, and therefore you should not have a job. That's just not appropriate."

But in some other states' exchanges, financial crimes such as fraud and forgery are automatically disqualifying. And though no long-term statistics are available, the three-year recidivism rate for people convicted of fraud or forgery in California is a whopping 52.8 percent, according to a brand-new report from the state Department of Corrections and Rehabilitation.

"Somebody with multiple counts of forgery — it is in their nature to commit crime," says identity-theft expert Robert Siciliano, CEO of BestIDTheftCompanys.com. "They see crime as the path of least resistance to make a living, and it would only make sense that they would gravitate toward a profession with this kind of access."

— *Jillian Kay Melchior writes for NATIONAL REVIEW as a Thomas L. Rhodes Fellow for the Franklin Center.*

<http://www.nationalreview.com/article/369695/californias-obamacare-scandal-jillian-kay-melchior>